

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANNY ROY SCHNEIDER,

Defendant-Appellant.

UNPUBLISHED
February 14, 2012

No. 300509
Grand Traverse Circuit Court
LC No. 09-010952-FC

Before: CAVANAGH, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of one count of first-degree criminal sexual conduct, MCL 750.520(b)(1)(a), and one count of second-degree criminal sexual conduct, MCL 750.520(c)(1)(a). We affirm.

Defendant's argument on appeal is essentially that the trial court erred in allowing the admission of expert testimony and that he received ineffective assistance of counsel. More specifically, defendant argues that the erroneous admission of unqualified expert witness testimony affected his substantial rights, and in failing to object to the introduction of this evidence, his trial counsel provided objectively unreasonable assistance. Because defendant's assertion of evidentiary error was not properly preserved, examination is limited to review for plain errors that affected his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Defendant's assertion that trial counsel was ineffective presents a mixed question of law and fact. Because no evidentiary hearing occurred, review of this argument is limited to errors apparent on the existing record. *People v Horn*, 279 Mich App 31, 38; 755 NW2d 212 (2008). To prevail on an ineffective assistance of counsel claim, a defendant must demonstrate that his attorney's conduct "fell below an objective standard of reasonableness" and that he was prejudiced as a result. *Strickland v Washington*, 466 US 668, 688-692; 104 S Ct 2052; 80 L Ed 2d 674 (1984); see also *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007). To establish prejudice, defendant must show that there is a "reasonable probability that, but for the counsel's unprofessional errors, the result of the proceeding would have been different," and that the result that did occur was "fundamentally unfair or unreliable." See *Strickland*, 466 US at 691-692; *Odom*, 276 Mich App at 415.

All relevant evidence is admissible in trial. MRE 402. Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable.” MRE 401. If evidence is helpful in shedding light on any material point in issue, then it is admissible under this definition. *People v Murphy (On Remand)*, 282 Mich App 571, 580; 766 NW2d 303 (2009). However, relevant evidence may still be excluded if the court determines that the unfair prejudicial effect of admitting the evidence would substantially outweigh its probative value. MRE 403; *Waknin v Chamberlain*, 467 Mich 329, 334; 653 NW2d 176 (2002).

Examination of the record shows that the conduct of defendant’s counsel did not fall below an objective standard of reasonableness.

In this case, defendant argues that trial counsel was ineffective because he allowed the testimony of Rosemary Schneider, the wife of defendant, and Doreen Radtke-Boyd, who was a daycare licensing consultant. Ms. Radtke-Boyd testified as to the following:

Based on our investigation, the department issued a summary suspension of Rosemary Schneider’s group child care license and she signed paperwork agreeing to the revocation. Summary suspension is immediate revocation based on an imminent threat to children, and it was issued on May 8th, three days after our visit there.

Mrs. Schneider also testified that she agreed to have her license for group child care suspended. This evidence was relevant to show that this daycare center was not still operating and was also relevant to both sides because defendant’s wife had agreed and cooperated with the licensing consultant and agreed to close the daycare center.

Trial counsel for defendant used the admission of this evidence in his theory of the case. He argued to the jury that they should be skeptical because the state acted on nothing more than the word of a five-year-old. In his closing, he stated:

It is not our burden to prove this, it’s the prosecutor’s, but they went right off and shut down the daycare because they had one statement they, didn’t even know if there was medical evidence.

This also was used to promote Mrs. Schneider’s testimony when she testified on her husband’s behalf.

Defendant also argues that Ms. Radtke-Boyd was allowed to testify as an expert on credibility of children. Nowhere in the record does it show that she ever testified as to whether or not she believed the victim.

Defendant’s final argument is that he was denied a fair trial by plain error that affected his substantive rights by the admission of Ms. Radtke-Boyd’s testimony. We disagree. As stated before, trial counsel relied on the testimony of Ms. Radtke-Boyd and Mrs. Schneider to illustrate his theory of the case: that a five-year-old makes a statement and the state overreacts causing the

daycare to be closed and his client to be charged with a crime he didn't commit. This constitutes sound trial strategy, and we conclude that he was not denied a fair trial.

Affirmed.

/s/ Mark J. Cavanagh

/s/ David H. Sawyer

/s/ Patrick M. Meter